

APPEAL NO. 042808
FILED DECEMBER 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 6, 2004. The hearing officer determined that the compensable injury of _____, includes an injury to the neck after September 2002 and that the respondent (carrier) has not waived the right to dispute the injury to the appellant's (claimant) neck by failing to timely dispute the impairment rating (IR). The extent-of-injury issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the carrier waiver issue, contending that the hearing officer's determination is incorrect as a matter of law because it is contrary to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(g) (Rule 130.102(g)) and Texas Workers' Compensation Commission Appeal No. 040150-s, decided March 8, 2004. The carrier responds that the claimant's appeal is "conclusory" and otherwise that Rule 130.102(g) is invalid pursuant to Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied).

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The designated doctor certified maximum medical improvement (MMI) and assessed a 16% IR based on cervical and lumbar ratings. In addition, in this case, in unappealed findings the hearing officer determined that the compensable injury includes the neck (cervical spine) after September 2002. The hearing officer, in unappealed findings determined the first quarter of supplemental income benefits (SIBs) ended on November 2, 2002, and that the carrier did not dispute the claimant's IR prior to November 2, 2002 (actually the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) is dated January 22, 2003).

The claimant contends that the carrier had waived the right to dispute the injury to the claimant's neck by failing to timely dispute the IR prior to the expiration of the first quarter SIBs pursuant to Rule 130.102(g). Rule 130.102(g) provides:

- (g) [MMI] and [IR] Disputes. If there is no pending dispute regarding the date of [MMI] or the [IR] prior to the expiration of the first quarter, the date of [MMI] and the [IR] shall be final and binding.

The carrier contends that Rule 130.102(g) is invalid based on the Fulton, *supra*, decision (an old 90 day rule decision). The Appeals Panel addressed a similar argument in Texas Workers' Compensation Commission Appeal No. 041240, decided July 14, 2004, citing Appeal No. 040150-s, *supra*, which held that challenges to the

extent of the compensable injury, that includes in the IR an impairment for that condition or body part cannot be challenged after the first quarter of SIBs had ended. The Appeals Panel, in that case, also noted that 040150-s, applied a duly promulgated rule (Rule 130.102(g)) and we decline to hold a properly promulgated rule invalid.

Accordingly, we reverse the hearing officer's determination that the carrier has not waived the right to dispute the injury to the claimant's neck by failing to timely dispute the IR, and render a new decision that the carrier has waived the right to dispute the injury to the claimant's neck (cervical spine) by failing to timely dispute the IR prior to the expiration of the first quarter of SIBs pursuant to Rule 130.102(g).

The true corporate name of the insurance carrier is **WAUSAU BUSINESS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge